equally divided Court, 402 U.S. 689 (1971); *Spann* v. *Joanna Western Mills*, 446 F.2d 120 (6th Cir. 1971); *Thomas* v. *Philip Carey Mfg. Co.*, 455 F.2d 911 (6th Cir. 1972). This trend, the Federation submits, is one that comports with the Congressional intent. It is also one that is consistent with the disposition of discrimination claims under the National Labor Relations Act. *Speilberg Manufacturing Co.* 112 NLRB 1080 (1955); *Collyer Manufacturing Co.*, 192 NLRB No. 150 (1971). There is no compelling reason for this Court to now mandate a contrary approach.

II. THE NATIONAL LABOR POLICY FAVORS ARBITRATION AS A MEANS OF DECIDING RACIAL DISCRIMINATION CLAIMS.

The decision below, in addition to avoiding multiple litigation, also comports with the national labor policy of encouraging the utilization of arbitration to resolve industrial controversies. This Court has consistently emphasized [3] that arbitration is one of the cornerstones of federal labor policy. The key to arbitration, of course, is the final and binding nature of that process. The Petitioner, however, would erode this principle in the important area of employment discrimination.

There is no basis for now carving out an exception to the policy of according finality to arbitration awards for employment discrimination cases. Such a view would bind one of the parties to the arbitration—the employer—while leaving the grievant free to pursue other remedies if the award should be adverse. The result will likely be a denigration of the arbitral process in such situations

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[3] See, e.g., *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957); *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); and *Boys Markets, Inc.* v. *Retails Clerks*, 398 U.S. 253 (1970).

with a concomitant impediment to the cause of alleviating employment discrimination. This position is also anomalous; arbitrators, as this Court recognized in the *Steelworkers Trilogy*, are clearly well-suited to resolve discrimination disputes. For example, in the instant case the critical question is essentially only the familiar arbitration issue of whether Petitioner was terminated for just cause. A controversy of this nature, as the Labor Board observed in *Collyer*, "can better be resolved by arbitrators with special skill and experience in deciding matters arising under established bargaining relationships than by the application . . . of a particular provision of [the] statute." 77 LRRM at 1934.[4] Moreover, in such cases, as in every arbitration situation, "it is the arbitrator's construction which was bargained for; . . . and the courts have no business overruling him because their interpretation of a contract is different from his." *Enterprise Corp.*, 363 U.S. at 599. This principle should be applied in the instant case.

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[4] Petitioner attempts to overcome this natural affinity of the arbitration process for resolving Title VII claims of employment discrimination by erroneously attacking it on an institutional basis. He raises, for example, the false spectre that labor organizations cannot be trusted to properly represent persons in this area because there is a "built-in conflict of interest" with any employee claiming discrimination. (Pet. Br. p. 27) This generalization overlooks the fact that a labor union has a duty of fair representation specifically recognized by this Court, *Vaca* v. *Sipes*, 386 U.S. 171 (1967), and that the failure to properly represent employees in the grievance-arbitration procedure violates that duty. *Steele* v. *Louisville and Nashville R.R.*, 323 U.S. 192.

III. THE FEDERAL COURTS SHOULD DEFER IN TITLE VII CASES TO PROCEDURALLY FAIR ARBITRATION AWARDS WHICH HAVE PREVIOUSLY DECIDED THE SAME ISSUES.

An appropriate accommodation, seeking to both avoid multiple litigation in Title VII cases and accord proper respect for the arbitration process, requires that the federal courts defer to arbitration awards in appropriate circumstances. There should be no blanket rule of non-deferral as Petitioner proposes.

The National Labor Relations Board has struck such a balance in confronting a similar need to accommodate the National Labor Relations Act to the arbitration process. The result is that the Board will defer to an arbitrator's award which resolves the dispute where the proceedings are fair and regular, the issue is properly before the arbitrator, and the decision is not repugnant to the policies of Labor Act.[8] A similar result should prevail as to employment discrimination cases. Where, as here, the award meets these criteria, it should be considered binding on all parties. This was the decision of the court below. It should be affirmed by this Court.

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[8] See *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955); *Collyer Manufacturing Co.*, 192 NLRB No. 150 (1971). *Cf. Rios v. Reynolds Metals Company*, 467 F.2d 54 (1972), in which the Fifth Circuit recently proposed a similar set of guidelines for purposes of achieving judicial deference to arbitration awards in Title VII cases.

CONCLUSION

For the reasons stated above, as well as those presented by the Respondent, the Federation urges the Court to affirm the decision of the court below.

Respectfully submitted,

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